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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

JOHN ARNOLD WOODARD, Petitioner, vs. JOHN (CRAIG) TURNBULL, Respondent.	)	Case No. 3:05-cv-00089-TMB-JDR MOTION TO STRIKE DOCKET NOS. 61, 62, 63, & 64

A. Introduction

Woodard claims that the Alaska Department of Corrections has violated his rights to access to the courts and privilege to attorney-client confidentiality by seizing and reviewing confidential legal materials. He has filed duplicate motions for a temporary restraining order and a request for a

preliminary injunction (Docket Nos. 61 & 63) supported by his affidavit (Docket Nos. 62 & 64).

Woodard filed a motion requesting the appointment of counsel in this action, and attorney Hugh Fleischer was appointed by this court to represent him. [Docket Nos. 4 & 5] Nevertheless, Woodard requests "temporary co-counsel status for purposes of this motion, until this and further pleadings can be submitted by [Mr.] Fleischer." The state hereby requests that this court strike Docket Nos. 61, 62, 63, and 64 because Woodard is represented by counsel and is not authorized to file *pro se* pleadings.

B. Analysis

In the first place, Federal Criminal Rule 11(a) proscribes the filing of a *pro se* pleading when a party is represented by an attorney. It states that "Every pleading . . . shall be signed by at least one attorney of record." Rule 11 makes no provision for exigent circumstances. Moreover, Woodard's claim of exigent circumstances is conclusory. Woodard has not described any circumstances that would prevent Mr. Fleischer from filing whatever motion he considers appropriate, if any.

Woodard's status as a habeas petitioner entitles him to no more. In *Price v. Johnston*, 334 U.S. 266, 68 S.Ct. 1049, 92 L.Ed.2d 1356 (1948) (a habeas corpus case), the Supreme Court stated that "a prisoner has no absolute right to

argue his own appeal or even to be present at the proceedings in an appellate court." 334 U.S. at 285, 68 S.Ct. at 1060 (citation omitted). Similarly, the Ninth Circuit Court of Appeals has found that a "defendant does not have an absolute right to both self-representation and the assistance of counsel." *United States v. Halbert*, 640 F.2d 1000, 1009 (9th Cir. 1981).

In addition, it is an oft-stated policy of the federal courts that they will not consider *pro se* filings from a person represented by counsel. *See, e.g., United States v. Essig*, 10 F.3d 968, 973 (3d Cir. 1993); *United States v. Halverson*, 973 F.2d 1415, 1417 (8th Cir. 1992); United States v. Nichols, 374 F.3d 959, 963 n.2 (10th Cir. 2004), remanded on other grounds, *Nichols v. United States,* 543 U.S. 1113, 125 S.Ct. 1082, (2005)(citing *United States v. Guadalupe* , 979 F.2d 790, 795 (10th Cir. 1992)). This policy mandates that this court should strike Woodard's *pro se* filings.

Woodard has had the assistance of counsel throughout this habeas case. Until now, he has not asked to represent himself. In fact, he has done the opposite: he moved to have counsel appointed to represent him. At least one federal court of appeals has found that by requesting appointment of counsel, the habeas petitioner waived any right he had to proceed *pro se*. *See Anderson v. United States,* 948 F.2d 704, 706 n.3 (11th Cir. 1991).

In sum, Woodard's *pro se* pleadings should be stricken. Alternatively, respondents request that the time for their response to the motion for preliminary injunction be stayed pending the outcome of the motion to strike.

DATED December 28, 2006 , at Anchorage, Alaska.

TALIS J. COLBERG
ATTORNEY GENERAL

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Certificate of Service

I certify that on December 28, 2006, a copy of the foregoing Motion to strike docket nos. 61, 62, 63 & 64, and proposed order was served electronically on Hugh W. Fleischer.

s/ W. H. Hawley